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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

DERWIN LAMONT HILLMON,

Defendant and Appellant.

C060353

(Super. Ct. No.
SF107914A)

On May 19, 2008, defendant Derwin Lamont Hillmon entered a negotiated plea of no contest to one count of felony child abuse (Pen. Code, § 273a, subd. (a)) in San Joaquin County case number SF107914A (hereafter case No. SF107914A). In exchange, three other counts were dismissed and the sentencing enhancements alleged were stricken.

Imposition of sentence was suspended and defendant was granted five years' formal probation. Defendant was also ordered to complete a 52-week parenting class and to pay a \$200 restitution fine (Pen. Code, § 1202.4); a \$200 restitution fine, suspended unless probation is revoked (Pen. Code,

\$ 1202.44); a \$20 surcharge; and \$1,320 for probation supervision.

Two months later, in July 2008, defendant was ordered to appear and show cause why his probation should not be revoked and sentence imposed. It was alleged that defendant had violated his probation by failing to obey all laws, as charged in San Joaquin County case number SF108996A (hereafter case No. SF108996A). Specifically, it was alleged that defendant inflicted corporal injury on a spouse or cohabitant in violation of Penal Code section 273.5, subdivision (a), for which a separate complaint was being filed.

On August 5, 2008, the trial court presided over a combined preliminary examination in case No. SF108996A and violation of probation hearing in case No. SF107914A. At that hearing, the victim in case No. SF108996A recanted, claiming defendant did not hit her, saying that she was "jumped" by women whom she had previously reported to the police for stealing her car.

Stockton City Police Officer Alfredo Octavio Saldana, Jr., testified that he interviewed the victim at the hospital. During the interview, the victim told Saldana that on the previous evening defendant had slapped her, knocked her to the ground, and said, "If you get off the ground, I'm going to knock you out." Officer Saldana further testified that the victim told him defendant had punched her twice in the face and at least once in the chest that morning. Saldana also stated that he had obtained an emergency protective order for the victim, who expressed fear for her safety.

Defendant objected to proceeding with the combined hearing and the objection was noted. The court found reasonable and probable cause to hold defendant to answer in case No. SF108996A, and also found the evidence sufficient to find defendant in violation of his probation. Defendant waived his right to a probation report prior to sentencing on his probation violation, but waived time for sentencing and requested that the court "put this over."

The court subsequently sentenced defendant to the upper term of six years in state prison. The court imposed the upper term based on the serious nature of the underlying offense: hitting a one-year-old child on the buttocks and legs with a leather strap as punishment for urinating on the living room carpet. Defendant was awarded 141 days of actual custody credit and 70 days of good-time credits, for a total of 211 days' credit.

Defendant appealed, and we appointed counsel to represent him on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks us to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

After the 30 days had passed, however, defendant attempted to file a supplemental brief, which this court rejected as

untimely. Approximately two weeks after that, defendant filed a motion requesting an extension of time in which to file a supplemental brief; that motion also was rejected.

On June 22, 2009, 52 days after the deadline for filing his supplemental brief, defendant filed another request, seeking permission to file a late brief. This time, defendant claimed counsel failed to properly advise him of the date by which he was to file his supplemental brief. We granted his request, and defendant's supplemental brief was filed with the permission of this court.

Defendant raises numerous claims in his supplemental brief, all of which lack merit. First, defendant claims the trial court erred in sentencing him on the probation violation without considering the pending competency proceedings in case No. SF108996A. Regardless of whether the competency proceedings in case No. SF108996A had any bearing on defendant's sentencing in case No. SF107914A, the record on appeal does not include a record of those proceedings. Without that record, we cannot consider what impact, if any, those proceedings would have had on defendant's sentencing.

Defendant indicates in his supplemental brief that this court "ordered" the reports of the competency proceedings be made part of the record here. In fact, this court's order was that records of any competency proceedings on file or lodged in case No. SF107914A be made part of the record on appeal. The trial court clerk responded, indicating there were no reports from competency proceedings lodged in case No. SF107914A.

Accordingly, there are no records for this court to review on this appeal.

Defendant further contends the trial court erred "when it failed to consider the facts at the time when probation was initially [sic] granted." Defendant argues that the following statement, made by the court at the time probation was granted, evidences mitigating circumstances that should have been considered when his probation was revoked: "However, based upon the deal you've made with the D.A.'s office, here because of the circumstances and the fact the child wasn't badly injured, they're going to offer you credit for time served. I'm going to put you on probation for five years with no additional jail time"

Apparently the court relied on these "mitigating" circumstances in granting defendant probation. Those same circumstances, however, were no longer relevant when the court found defendant had violated his probation. The court did not err in failing to consider them.

Defendant also claims the trial court erred in relying on "inadequate information" as the basis for revoking his probation. In support of his claim, defendant argues the trial court relied on hearsay at the initial preliminary hearing in reaching its conclusion. Defendant does not, however, identify in the record any hearsay objections raised by counsel in the trial court. His failure to do so results in a forfeiture of the claim on appeal. (*People v. Freeman* (1994) 8 Cal.4th 450,

482, fn. 2; *Duarte v. Chino Community Hospital* (1999)
72 Cal.App.4th 849, 856.)

Moreover, the portion of the reporter's transcript that defendant quotes in his brief does not include a hearsay objection. A hearsay objection cannot be raised for the first time on appeal. (*Damiani v. Albert* (1957) 48 Cal.2d 15, 18.)

Having also undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

RAYE, J.

We concur:

SCOTLAND, P. J.

HULL, J.